

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 117 of 2006

SMT. SUNITA
V/S
SHRI IQBAL ALI & ANR

Mr. VIKAS BALIA, for the appellant / petitioner

Date of Order : 14.7.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant-plaintiff-
landlord.

The plaintiff filed the suit for eviction from the
suit shop, on the ground of subletting and material
alteration. Both the learned Courts below have dismissed
the suit, finding the alleged alteration to be not material
alteration, and there being no subletting.

It is contended by learned counsel for the
appellant, that the defendant by making openings in the
wall situated between two shops, being No.245 and 246, and
by opening a door towards the south for having excess to
the staircase, and by changing the flooring, has materially
altered the premises, more so because, the two shops
belonged to two different landlords, and are let out to two
different tenants, and by this alteration, both the tenants

being united, and are thus, adversely affecting the landlords' rights as well. Regarding subletting, it was submitted, that admittedly, the tenant-defendant has entered into a partnership with the defendant No.2, and neither the partnership deed has been produced on record, nor has it been satisfactorily shown by the defendant-tenant, that he continues to retain substantial interest in the partnership, so also the possession over the shop, as such, it has clearly established that the tenant has sublet the premises to the defendant No.2, and therefore, the suit has wrongly been dismissed.

I have considered the submissions and have gone through the impugned judgments.

At the outset, it may be observed, that the plaintiff has very intelligently cooked up the stories, very impressive submissions have been made in the above form, by the learned counsel for the appellant, but then the perusal of the two judgments of the learned Courts below disclose the real colours of the plaintiff, and on proper appreciation thereof, in my view, the learned Courts below were right in dismissing the plaintiff's suit.

Learned lower Appellate Court however by relying upon judgment of Hon'ble the Supreme Court, so also various other judgments of various other High Courts has found,

that though the tenant has constituted a partnership with his father and brother, but he himself is carrying on the business in the name of partnership in the shop, and there is nothing to show, that he has given away legal possession of the premises, it cannot be said, that the defendant has sublet the premises. Regarding material alteration also, the learned lower Appellate Court, following the judgment of Hon'ble the Supreme Court, and a judgment of this Court, which followed the said Supreme Court judgment, found that the alleged alterations do not amount to material alteration.

It is true that the defendant's version was, that it was the plaintiff's husband, who himself had made the alterations prior to letting out, and on this aspect, learned lower Appellate Court did not give any finding. However, a look at the judgment of the learned trial Court, which deals with the matter in detail, does clearly show the real picture.

The things as emerged from the judgment of the learned trial Court are, that the two defendants, father and son, were already tenant in shop No.245, carrying on their business in the said shop, in the name of Sadri Centre, and the suit shop No.246 was in tenancy with other tenant, being Rajasthan Art Studio. Shop No.246 (suit shop) belongs to the plaintiff, while the adjoining shop No.245

belongs to her husband only. In this background, after the erstwhile tenant of shop No.246 vacated, that shop was let out to the defendant, and it is not in dispute, that the business in the name and style of Sadri Centre is being carried on in the two shops, i.e. in both the shops, by these very set of defendants. Likewise, it has also been found by the learned trial Court, that on the first floor of the two shops, belonging to allegedly two different persons (being the husband and wife), one single hall was constructed, and that hall has been let out to another firm of the defendants itself, whereon the business is being carried on, and appreciating this factual situation, the learned trial Court has found the version of the defendant to be more reliable, about the plaintiff's husband himself having made the alterations before letting out the premises.

During course of arguments learned counsel for the appellant did not dispute this position, that the two shops being No.245 and 246 are owned by the husband and wife respectively, and the rent note of the two shops is in the name of the father and son respectively, and that, in the shops, these very, father and son, are carrying on the business. It is significant to note, that the above finding of fact, recorded by the learned trial Court, about the alteration having been done by the plaintiff's husband himself, before letting out the premises, has not been set

aside by the learned lower Appellate Court, and nothing was shown on the side of the appellant, as to how that finding is not sustainable.

Significantly, even the plaintiff herself in her statement, has admitted, that the two defendants only are carrying on business in the shop, and she did not find anybody else in the shop.

It is also significant to note, that the learned counsel has submitted, that on identical lines, the husband of the appellant has also filed a suit against the present defendant No.2, again alleging the shop to have been sublet to the present defendant No.1, and that suit too, has been dismissed by both the learned Courts below.

Thus, on overall comprehension of the situation, the things that emerge are, that the husband and wife being one, though hyper- technically being different identities, collectively owning the two shops, again hyper-technically in individual's name, and having let out both the shops to the father and son, shop No.246 having been let out when the two defendants were already carrying on business in the shop No.245, in the name of Sadri Centre, notwithstanding the fact, that again hyper-technically that shop was in the tenancy of the father, and admittedly, this very business in the name of Sadri Centre is being carried on in both the

shops, and again admittedly, one hall having been constructed collectively on both the shops, and having been let out to the firm of the defendants itself.

All this does clearly show, that the plaintiff has simply resorted to extreme hyper-technicalities of law for ulterior motives, say arm twisting of the tenants, by simulating the grounds of subletting, and material alterations. In my view, the two learned Courts below have rightly negatived the grounds and dismissed the suit.

The appeal thus, does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA), J.

/Sushil/